

IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC No.74 of 2007
DR.UPENDRA PRASAD SINGH
Versus
THE STATE OF BIHAR & ORS

For the petitioner: Mr. Sunil Kumar Singh, Advocate.
For the State : Mr. P. K.Shahi, Advocate General.

9 31.7.2008

1. Heard the learned counsel for the petitioner and Mr.P.K.Shahi, learned Advocate General appearing for the State.

2. In the instant writ application the petitioner has prayed for directing the respondent no.1 to hand over the investigation of Pirbahore P.S.Case No. 124/05 to the Central Bureau of Investigation. Further prayer has been made to direct the investigating agency to conduct the investigation in a proper way as the same has been done in a perfunctory manner. He has further prayed to remove respondent no.8, namely, Afzal Amanullah, from the post of Secretary, Department of Home, Government of Bihar, Patna so that investigation of Pirbahore P.S. Case No.124 of 2005 can be carried out without any external interference.

3. The main case of the petitioner is that the date of birth of respondent no.7, Dr. Abdul Kasim Siddiqui was 10.6.1947. However, he got his date of birth altered in the school register as 10.6.1946, so that he may become eligible for admission in P.M.C.H.,otherwise he would have been under age for admission, being 16 years only. The date of birth was altered in school register pursuant to order of R.D.D.E. Patna, the competent authority. The petitioner states that Dr.Siddiqui at the time of admission in P.M.C.H. has entered his date of birth in medical register as

10.6.1946, in his own pen. Later on, after he entered service, in order to gain an advantage of an extra year, Dr.Siddiqui began to claim his date of birth as 10.6.1947. Dr.Siddiqui with help of high ups got his date of birth recognized as 10.6.47. The petitioner raked up this issue with the Government and demanded action against Dr.Siddiqui and others who helped him in his misdeeds. He alleged that Dr. Siddiqui was shielded by Sri Afzal Amanullah, I.A.S., Home Secretary, Respondent no.8, and Minister, Sri Shakeel Ahmad Khan.

4. While giving the back ground of the case, the petitioner submits that he was appointed an Assistant Professor, Surgery on 16.12.1977, whereas respondent no.7 was appointed as an Assistant Professor, in the Department of Surgery, on 13.2.1979. By sheer manipulation, respondent no.7 secured promotion to the post of Associate Professor, with effect from 9.11.1987, though he was junior to petitioner. The petitioner filed Cr.W.J.C. No.2905 of 1997 claiming seniority over Dr. Siddiqui which was dismissed. However, in L.P.A. it was ordered that the petitioner be deemed to have been promoted to the post of Associate Professor with effect from 9th of November, 1987. As such the petitioner succeeded in getting the aforesaid relief.

5. On coming to know that respondent no.7 has got his date of birth recognised as 10.6.1047, the petitioner filed petition in the Health Department drawing its notice to such act of illegalities

committed by Dr. Siddiqui. The department vide letter no.568 (17) dated 25.10.2000 served show cause notice on respondent no.7 asking him to explain such glaring discrepancies in respect of entry of his date of birth. Respondent no.7 filed his show cause with details. The file after being processed was put up before the Secretary, Health, Shri Afzal Amanullah. The latter instead of taking action, returned the file seeking opinion from the Law Secretary, as to whether the correction in the date of birth of respondent no.7 from 10.6.1947 to 10.6.1946 was barred by estoppel and acquiescence. Law Secretary in his turn wrote to the Addl. Law Secretary, that as Dr. Siddiqui obtained his admission by furnishing his date of birth as 10.6.1946, so no benefit could be given to him by reckoning his date of birth to be 10.6.1947. Learned counsel for the petitioner submits that respondent no.8, Shri Afzal Amanullah, (then Health Secretary) who is now the Secretary Home, forwarded the file to the Advocate General. The learned Advocate General vide his detail opinion dated 12.2.2001 was of the view that the Government was free to take whatever steps were suitable against Dr. Siddiqui, whether by way of criminal proceeding and/or disciplinary proceeding. He alleges that no step was taken by the government or was allowed to be taken seemingly under the influence of the then Secretary, Health, Medical Education and Family Welfare, and respondent no.7 was allowed to reap benefit of his fraud.

6. Being convinced that Health Department would

not take any action against Dr.Siddiqui, he made complaints to other authorities including Legislative Council. Finally the matter was taken up by the Assurance Committee of Bihar Legislative Assembly being Assurance No.138/25. The Assurance Committee issued notice to Sri Afzal Amanullah, then Secretary Health. He sought time on the ground that he has referred the matter to the Attorney General of India for his opinion, though the opinion of the learned Advocate General of the State was already on the record.Only when Shri Amanullah was transferred from post of Secretary, Health, Medical Education & Family Welfare, an F.I.R. being Pirbahore P.S. Case No.124/05 dated 12.4.2005 was registered against the respondent no.7 by Dr. K.N.P. Yadav, Additional Secretary, Health, Medical Education and Family Welfare pursuant to Letter No.313 (17) dated 8.4.2005 of Health Department..

7. The petitioner submits that now seeing himself in swoop Dr. Siddiqui started influencing investigation with tacit support of Shri Amanullah who was now in a stronger position being Home Secretary. The investigation continued in a perfunctory manner and not even a single material witnesses named in the F.I.R. was examined by the police under section 161 Cr.P.C. under influence of respondent no.8. The petitioner being aggrieved, filed Cr.W.J.C. No.452 of 2006 with the following prayer:

- (i) For issuance of an appropriate writ, direction to

appropriate

Agency for completing the respondent no.2 as a cost in
Connection with Pirbahore P.S. Case No.124/05.

- (ii) For a direction to the State of Bihar (through the Chief Secretary) to investigate the matter after removing the Respondent no.2 from the post of Home Secretary, so that respondent no.2 would not influence the process of investigation by using his power.
- (iii) For any other relief or reliefs to which the petitioner is entitled to in the eyes of law.

8. The aforesaid writ application was dismissed as withdrawn on 22.6.2005.

9. The petitioner now has filed the instant writ application praying that the investigation be handed over to the C.B.I. and Sri Afzal Amanullah be removed from the Secretary, Home, Government of Bihar, Patna so that the investigation of Pirbahore P.S. Case No.125/05 can be carried on without any interference.

10. Mr. P.K. Shahi, learned Advocate General appearing on behalf of the State has raised issue of maintainability of the writ application . He submitted that in any view of the matter this writ application has become infructuous as the police has already submitted final report in favour of Dr. Siddiqui, respondent no.7, finding the case to be false. Mr. Shahi further submits that in the case of S. Basu vrs. State of U.P. reported in

2008(2) SCC 409, the Apex Court has laid guidelines for referring the case to C.B.I. for investigation. He submits that the instant case will not fall in line of cases which as per the guidelines of the Apex Court can be directed to be investigated by the C.B.I. as observed in case of S.Basu (supra).

11. Mr. Bipin Kumar Sinha, learned counsel for the C.B.I. states that the C.B.I. at the moment is already over burdened with number of cases.

12. As the issue of maintainability of writ petition has been questioned, this Court first takes up the point of maintainability of this writ application itself. The case of the State is that as F.I.R. has been lodged by Government and as such private person has no locus to file the instant case seeking any relief in respect of investigation of the case. If the petitioner was aggrieved in any manner he could have directly filed a complaint on his own.

13. In view of the facts of the instant case, it is difficult for me to accept the submission of the learned Advocate General that the instant writ application is not maintainable at the instance of petitioner. According to the petitioner it was mainly at his instance that the Assurance Committee of Legislative Council and the Government examined the allegation of alleged fraud committed by Dr. Siddiqui. It was only at the persuasion of Assurance Committee that the Government issued notification no.288 dated 4.4.2005 superannuating respondent no.7 w.e.f.

30.6.2004 and ordering recovery of excess salary paid to him, besides decision to finally institute a criminal case against respondent no.7. It appears from the materials on record that the petitioner raised the issue involved in the instant writ application as he was also an affected party consequent to shifting of date of birth of Dr.Siddiqui. The petitioner filed many complaints in this respect with Government and Assurance Committee of Legislative Council. It appears that it was mainly at the instance of petitioner that wheel of prosecution was set rolling against respondent No.7. This Court as such is of the view, that the writ application is maintainable at the instance of petitioner.

14. Having, thus, decided that the petitioner has locus to maintain this writ application, I come to the next question whether the relief as prayed for can be granted to the petitioner. The relief prayed for is for a direction to respondent no.1 to hand over the investigation of the instant case, namely Pirbahore P.S. Case No.124/05 to the C.B.I. or in any case to remove Sri Afzal Amanullah from the post of Secretary, Home, so that he may not influence the investigation and the same may be continued in a proper manner.

15. The case of the petitioner is that respondent no.8 Sri Afzal Amanullah has soft corner for respondent no.7 and he has been shielding him all this time as stated earlier. He submits that investigation is not being carried out fairly and properly and many material witnesses have not been examined on account of influence

exhorted by respondent no.8. He has alleged that respondent no.8 is misusing his post in influencing the investigation. The aforesaid stand of the petitioner has been controverted and denied by Sri P.K.Shahi, learned Advocate General for the State.

16. This Court after hearing the learned counsel for the parties do not find any basis for granting the relief prayed for by the petitioner. It is not for a party to choose for himself, the agency which would investigate into the case. An aggrieved party whether it is prosecution or accused can only plead for appropriate investigation. He has no right to claim investigation by any particular agency like C.B.I. Further more a case cannot be transferred to another agency for investigation as a matter of right, merely because a party makes some allegation. The Hon'ble Apex Court in case of S. Basu(supra) has observed that a direction for C.B.I. enquiry should be done only in a rare and exceptional case. In my view the facts and circumstances of the case does not call an investigation by C.B.I. or any other agency.

17. The other prayer of the petitioner is that pending final investigation respondent no.8 Sri Afzal Amanullah should be removed from the post of the Home Secretary, Bihar as he is influencing the investigation. The aforesaid relief sought for by the petitioner does not contain any merit and the same is also to be rejected for the following reasons. Firstly the petitioner has not brought forth any material evidence before this Court in support of his contention that respondent no.7 is influencing the investigation

of the instant case to shield Dr. Siddiqui, respondent no.8. The petitioner made certain allegations against Sri Afzal Amanullah, but that too was prior to initiation of investigation of the instant case instituted on 8.4.2005. The petitioner has not brought any material before this Court to come to a finding that Sri Afzal Amanullah has misused his position to influence the investigation of instant case. Moreover the prayer of petitioner has even become infructuous as chargesheet has been already submitted in the case.

18. In view of the facts noticed above I find that instant case does not fall in categories of cases in which C.B.I. investigation is required. Similarly, I find that there is no material on record or reasons to believe that Sri Afzal Amanullah, I.A.S. has influenced the investigation and he should be removed pending investigation which, in fact, already stands concluded as the police has submitted final form. However, as I have held that petitioner has some locus and is an interested party he may file appropriate application in court in seisin of the instant case, if he is so aggrieved and advised.

19. With the aforesaid observation this writ application stands dismissed.

AnilK.sinha

(Samarendra Pratap Singh,J.)